

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

STANLEY HERRING,

Plaintiff,

v.

SCI FAYETTE (J Block),

Defendant.

Civil Action No. 2:21-cv-57

Hon. William S. Stickman IV

Hon. Maureen P. Kelly

ORDER OF COURT

Pro se Plaintiff Stanley Herring (“Herring”), who is incarcerated at Pennsylvania State Correctional Institution – Fayette (“SCI Fayette”), brought this action against Defendant SCI Fayette (J Block) alleging unnamed corrections officers destroyed or discarded some of his personal property and refused to give him a hernia belt. (ECF No. 7). Magistrate Judge Maureen P. Kelly issued a Report and Recommendation on October 12, 2021, recommending that the Court dismiss Plaintiff’s Complaint pursuant to 28 U.S.C. § 1915(e)(2)(B) for failure to state a claim upon which relief can be granted. (ECF No. 25). Plaintiff was given until October 29, 2021 to file objections. (ECF No. 10).

No objections having been filed, the Court hereby ADOPTS Magistrate Judge Kelly’s Report and Recommendation as its Opinion. It fully agrees with her comprehensive legal analysis and conclusions.

AND NOW, this 8th day of November 2021, IT IS HEREBY ORDERED that Plaintiff’s claims arising under 42 U.S.C. § 1983 are DISMISSED pursuant to 28 U.S.C. § 1915(e)(2)(B) for failure to state a claim for which relief can be granted, as follows:

- All claims against Defendant SCI-Fayette are DISMISSED WITH PREJUDICE¹;
- Plaintiff's federal lost property claim is DISMISSED WITH PREJUDICE, but without prejudice to Plaintiff raising a state law claim in state court, if appropriate;
- Plaintiff's claims arising under the Second, Ninth, and Thirteenth Amendments are DISMISSED WITH PREJUDICE; and
- Plaintiff's First Amendment access to courts and free exercise claims and his Eighth Amendment conditions of confinement claim, are DISMISSED WITHOUT PREJUDICE with leave for Plaintiff to file an Amended Complaint alleging sufficient facts to state a claim upon which relief may be granted. The Amended Complaint is due by 12-8-21.

BY THE COURT:



WILLIAM S. STICKMAN IV
UNITED STATES DISTRICT JUDGE

¹ As to the claims dismissed with prejudice, the Court holds that further amendment would be futile. *See in re Burlington Coat Factory Sec. Litig.*, 114 F.3d 1410, 1434 (3d Cir. 1997) (a court may decide to deny leave to amend for reasons such as undue delay, bad faith, dilatory motive prejudice, and futility). *See also* 3 James Wm. Moore et al., *Moore's Federal Practice* ¶ 15.15 (3d ed. 2021) (An amendment is futile if it merely restates the same facts as the original complaint in different terms, reasserts a claim on which the court previously ruled, fails to state a legal theory, or could not withstand a motion to dismiss.”).